

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SEЛИM ZHERKA, and THE GUARDIAN NEWS, INC.,

Plaintiffs,

ANSWER

-against-

07 Civ. 8047 (CLB)

RUSSELL MARTINEZ, individually, STEPHEN  
FORCE, individually, and EDWARD FALCONE,  
individually,

Defendants.

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Defendants Russell Martinez, Stephen Force and Edward Falcone ("Defendants"), by their attorneys, Keane & Beane P.C., as and for their Answer to the above-captioned action, state as follows:

1. The allegations contained in Paragraph "1" of the Complaint are conclusions of law and therefore require no response. To the extent a response is deemed necessary, Defendants deny said allegations.

2. The allegations contained in Paragraph "2" of the Complaint are conclusions of law and therefore require no response. To the extent a response is deemed necessary, Defendants deny said allegations.

3. Deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "3" of the Complaint.

4. Deny the allegations contained in Paragraph "4" of the Complaint, except admit that Defendant Russell Martinez is employed as the Head Custodian at the Riverfront Library; admit that the Riverfront Library is located at 1 Larkin Center, Yonkers, New York; and admit

upon information and belief that Philip Amicone is the current Mayor of the City of Yonkers, New York.

5. Deny the allegations contained in Paragraph "5" of the Complaint, and state that Defendant Stephen E. Force is the Director of the Yonkers Public Library system.

6. Deny the allegations contained in Paragraph "6" of the Complaint, and state that Defendant Edward M. Falcone is the Deputy Director of the Yonkers Public Library system.

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7. Deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "7" of the Complaint.

8. Deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "8" of the Complaint.

9. Deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "9" of the Complaint.

10. Deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "10" of the Complaint, except admit that at various times beginning in or around July 2007, a number of enclosed, metal receptacles used for dispensing free copies of The Westchester Guardian newspaper (the "Guardian Boxes") were placed inside the Riverfront Library.

11. Deny the allegations contained in Paragraph "11" of the Complaint.

12. Deny the allegations contained in Paragraph "12" of the Complaint.

13. Deny the allegations contained in Paragraph "13" of the Complaint, and state that at the Riverfront and Will Libraries, a variety of free periodicals are made available to the public at prescribed locations within those facilities.

14. Deny the allegations contained in Paragraph "14" of the Complaint.

15. Deny the allegations contained in Paragraph "15" of the Complaint, except state upon information and belief that Plaintiff Selim Zherka retrieved certain Guardian Boxes from the Riverfront Library.

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16. Deny the allegations contained in Paragraph "16" of the Complaint.

17. Defendants repeat and reallege each and every response set forth in paragraphs "1" through "16" above as if fully set forth herein.

18. Deny the allegations contained in Paragraph "18" of the Complaint.

19. Defendants repeat and reallege each and every response set forth in paragraphs "1" through "18" above as if fully set forth herein.

20. Deny the allegations contained in Paragraph "20" of the Complaint.

**AS AND FOR A FIRST  
AFFIRMATIVE DEFENSE**

21. The Complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND  
AFFIRMATIVE DEFENSE**

22. Plaintiffs failed to mitigate some or all of their alleged damages.

**AS AND FOR A THIRD  
AFFIRMATIVE DEFENSE**

23. Plaintiffs' claims are barred by the equitable doctrines of estoppel, laches, waiver, and unclean hands.

**AS AND FOR A FOURTH  
AFFIRMATIVE DEFENSE**

24. Defendants are entitled to qualified immunity from liability for damages based upon the actions alleged in Complaint.

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**PRAYER FOR RELIEF**

WHEREFORE, Defendants respectfully request entry of a judgment dismissing the Complaint in its entirety, and awarding them such other and further relief as to this Court may seem just, equitable and proper.

Dated: White Plains, New York  
November 2, 2007

**KEANE & BEANE, P.C.**

By:



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